

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Improving Competitive Broadband Access to)	GN 17-142
Multiple Tenant Environments)	
)	

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)^{1/} submits these reply comments in response to the Notice of Inquiry in the above-referenced proceeding that seeks to improve competitive broadband access in Multiple Tenant Environments (“MTEs”).^{2/} T-Mobile applauds the Commission’s efforts to ensure that consumers enjoy the benefits of telecommunications competition everywhere they go. The NOI is a valuable first step in reviewing how the Commission might strengthen and expand its rules governing access to MTEs – something which directly affects consumers’ ability to secure services from a variety of providers.

In considering broadband competition in MTEs, the Commission should keep in mind that consumers increasingly rely on wireless providers like T-Mobile for broadband access. In turn, wireless companies often rely on Distributed Antenna Systems (“DAS”) and similar facilities to serve customers in MTEs. Accordingly, meaningful access to those DAS facilities on reasonable terms and conditions is important for meeting consumer demand within MTEs and providing wireless services on a competitive basis.

^{1/} T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

^{2/} *In the Matter of Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Inquiry, GN Docket No. 17-142 (rel. June 23, 2017) (the “NOI”).

While T-Mobile appreciates the Commission's efforts, where appropriate, to roll back or eliminate unnecessary regulations, this proceeding provides a useful tool for the Commission to determine whether the current business practices for DAS are frustrating market forces and harming consumers.

I. ACCESS TO MTEs IS CRITICAL TO PROVIDING COMPETITIVE WIRELESS SERVICES

The NOI is focused on facilitating competitive broadband deployment in MTEs, but emphasizes wireline access to those facilities. Wireless broadband access – which is critical to an increasing number of Americans – can be similarly affected by MTE access restrictions or limitations. Terrestrial mobile providers like T-Mobile are rapidly becoming the primary means by which consumers access the Internet – including in homes and offices. For example, according to the Pew Research Center, 13% of Americans already rely solely on their mobile devices for home Internet access,^{3/} and that percentage will only continue to rise. In fact, the Commission itself recently recognized in its Section 706 Report Notice of Inquiry that mobile broadband serves a role comparable to that of wireline access.^{4/} Because of the increasingly important role mobile wireless carriers play in providing Americans anywhere, any-time online access, the Commission should also consider MTE access issues relevant to those providers in this proceeding.

^{3/} Pew Research Center for Internet and Technology, *Internet/Broadband Fact Sheet* (Jan. 12, 2017), <http://www.pewinternet.org/fact-sheet/internet-broadband>.

^{4/} *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans*, Notice of Inquiry, GN Docket 17-199 (rel. Aug. 8, 2017) (asking whether it should evaluate wireline and mobile broadband as “separate and distinct ways to achieve” Internet access, making its Section 706 inquiry into the deployment of one or the other, rather than exclusively wireline, access).

Within MTEs, wireless carriers often reach customers through DAS facilities. In a DAS, small antennas are typically installed on shared wiring within the MTE. The signal is then transmitted over the common wiring within the MTE to a carrier point-of-presence. This allows providers to supplement macro-cell coverage with targeted, small-cell deployments that can fill gaps in coverage caused by dense walls (such as a large office building or shopping mall) and provide additional capacity in areas with many users (such as an entertainment venue). Without the ability to access a DAS, a carrier's customer may have little or no indoor coverage, potentially causing both a frustrating user experience and raising significant public safety concerns (since, as the Commission has noted, the "great majority" of 911 calls are made from mobile devices^{5/}).

There are generally two types of DAS facilities: Neutral Host DAS and Carrier Operated DAS.^{6/} The former is typically built and operated by a third party on behalf of a facility owner or manager; the DAS is then made available to potential users (including carriers). The latter is generally constructed and operated by a carrier through an agreement with a facility owner or manager. As discussed further below, both systems may limit access by competitive carriers, feature designs that favor a particular carrier, or make access to MTEs uneconomical by allowing the DAS operator to charge unreasonable, monopolistic fees.

II. DAS BUSINESS ARRANGEMENTS CAN LIMIT ACCESS TO MTEs

DAS systems do not typically implicate many of the concerns that the Commission identifies in the NOI as hampering wireline MTE access, such as bulk billing, revenue sharing,

^{5/} *In Re Wireless E911 Location Accuracy Requirements, Third Further Notice of Proposed Rulemaking*, 29 FCC Rcd. 2374 ¶¶ 23-37 (2014).

^{6/} A third variety, enterprise systems – where the DAS system is provided and owned by the facility – can be either a Neutral Host System or a Carrier Operated system.

etc. Their operation can nonetheless limit competition among wireless carriers that seek to provide coverage within MTEs because of other types of unreasonable restrictions that hamper access.

Limited Access Arrangements

One of the most problematic aspects of typical DAS facilities is that they are often subject to agreements that limit access by competitive carriers or put a wireless competitor in charge of the DAS system.^{7/} This type of arrangement typically occurs when a venue or building manager permits a third-party operator or carrier to restrict either further access to the existing DAS system or the deployment of new facilities within that MTE. These agreements often preclude T-Mobile from deploying its own indoor coverage solution separate from the existing DAS, even when the MTE could physically accommodate a new system. Even when T-Mobile can access the MTE (by installing its own facilities or using a pre-existing system), these arrangements may force a new entrant to negotiate with the incumbent carrier, which has little incentive to allow a direct competitor to access the facilities in a reasonable, timely or cost-effective manner.

Restrictive Design

Another problem with the current DAS framework in MTEs around the country, particularly given the prevalence of the limited access arrangements discussed above, is that the DAS facilities may be technically incompatible with a new entrant's technology or so antiquated that they require replacement. DAS are often designed at the direction of the first occupant to be technologically compatible with its network in exchange of agreeing to underwrite initial

^{7/} See *Comments of Sprint Corporation*, GN Docket No. 17-142, filed Jul. 24, 2017 at 2 (“Sprint Comments”).

construction costs. But this can reduce the usefulness of the DAS to other carriers. For example, when attempting to find a coverage solution in a large entertainment venue, T-Mobile discovered that it would be unable to utilize the existing DAS because of technical incompatibility; when T-Mobile explained the issue, the venue owner admitted its DAS sponsor had not made it aware that other carriers' use of the system would be limited. T-Mobile has also found that many of the DAS facilities currently in place will be incompatible with Fifth Generation ("5G") wireless technologies once they are available for deployment. Yet, in many of these agreements, the DAS manager, who may be a carrier-competitor, has the right to prohibit T-Mobile from constructing its own technologically compatible or superior system.

Unreasonable Fees

Another related issue with many DAS deployments is that the system operator (be it a third-party or a carrier) will often attempt to charge unreasonable, non-cost-based fees for access to a DAS, with no recourse for the new entrant due to the exclusivity agreement between the venue and incumbent.^{8/} For example, venue owners or carriers will attempt to recapture the costs of installed DAS systems well in excess of the remaining value of the system. In one stadium, T-Mobile found that the cost of installing its own coverage solution would be around \$50,000; the venue owner demanded over \$1 million for access to the then-current DAS, despite the age of the system and its inability to accommodate 5G wireless networks and state-of-the-art equipment. While this was an extreme case, on average, T-Mobile estimates that DAS owners charge around 30-40% more for access to existing, aged systems than it would cost T-Mobile to construct its own state-of-the-art systems.

^{8/} See *Sprint Comments* at 3.

III. THE COMMISSION SHOULD CONSIDER PROHIBITING SUCH UNREASONABLE PRACTICES IN THE DAS MARKETPLACE AND HAS AMPLE LEGAL AUTHORITY TO DO SO.

Given the impact on competition in MTEs, the Commission should consider whether DAS facilities are open to all compatible carriers on fair and reasonable terms, or whether certain parties are engaging in conduct which unreasonably restricts the ability of others to provide broadband service in MTEs.

Specifically, the Commission should consider whether the DAS agreements described above effectively restrict access to MTEs in violation of the rules.^{9/} Similarly, it should assess whether carriers who are first-occupants in Neutral Host systems should be required to take into account the compatibility of the systems with potential future carrier occupants. For example, it should consider whether to adopt regulations applicable to DAS that are similar to its rules governing internal wiring and conduits or rights-of-way in an MTE.^{10/} For Carrier Operated DAS, the Commission should consider how it can ensure that carriers provide access to other competitive carriers under reasonable terms and conditions. In any case, it should consider whether carriers should be able to deploy their own coverage solutions, despite existing DAS exclusivity agreements, where the existing DAS system is technologically incompatible or outdated, or effectively inaccessible due to unreasonable limitations or terms.

The Commission has several potential sources of legal authority to act in this context, depending on the classification of entities that manage access to the DAS facilities. To the

^{9/} See *Promotion of Competitive Networks in Local Telecommunications Markets et al.*, Fourth Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 22983, 23001 ¶ 37 (2000) (explaining that “contracts between building owners and local carriers that do not explicitly deny access to competing carriers, but nonetheless establish such onerous prerequisites to the approval of access that they effectively deny access, are also prohibited”).

^{10/} *Id.* at ¶ 1.

extent the Commission considers those services to be provided on a common carrier basis, it has authority under Section 201(b) to ensure that charges and practices relating to accessing DAS facilities are not unjust or unreasonable.^{11/} If the Commission does not consider those services governed by Title II (or that classification changes in the future), the Commission may exercise its authority under Title III, as it did in the data roaming context, to ensure that the services offered are subject to fair terms which do not undermine competition.^{12/}

IV. CONCLUSION

T-Mobile applauds the Commission's stated plans to evaluate ways to improve competitive broadband access in MTEs. In doing so, the Commission should also focus on wireless broadband access, especially in light of its growing importance in overall broadband connections and its unique role in public safety. The Commission should consider the actions it can take to ensure that all carriers can access MTEs on reasonable terms, allowing these carriers to provide their customers with the highest quality service possible.

Respectfully submitted,

/s/ Cathleen A. Massey
Cathleen A. Massey
Joshua L. Roland
David M. Crawford
T-MOBILE USA, INC.
601 Pennsylvania Avenue, N.W.
Suite 800
Washington, DC 20004
(202) 654-5900

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^{11/} 47 U.S.C. 201(b).

^{12/} See, e.g., *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411 at ¶ 57-70 (2011) *aff'd* by *Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).